Diversity of citizenship is a ground for federal jurisdiction under the statute for removal of causes. See ACT OF MARCH 3, 1887, § 1. But by judicial construction, all the defendants in a joint action must be citizens of states other than that of the plaintiff. *Alabama Great Southern Railway Co.* v. *Thompson*, 200 U. S. 206. Also, a case arising under the laws of the United States may be removed to a federal court; and a suit brought against a corporation created by Act of Congress, presents such a case. *Texas & Pacific Railway Co.* v. *Cody*, 166 U. S. 606. But if the same construction were put upon this ground for removal as upon the former, the presence of co-defendants who have no right to federal jurisdiction should prevent removal. But since the present joint action arises under the laws of the United States as to one defendant, the court holds that the whole case is permeated with a federal character. This is a logical interpretation of the language of the act in question; and it was correctly admitted that the action, brought in joint form, could not be separated by one defendant. *Alabama Great Southern Railway Co.* v. *Thompson, supra.* And in any case removal to the federal court must be under petition of all the defendants. *Chicago & Rock Island Ry. Co.* v. *Martin*, 178 U. S. 245.

GIFTS — GIFTS CAUSA MORTIS — PRESUMPTION OF UNDUE INFLUENCE FROM CONFIDENTIAL RELATIONS. — A gift *causa mortis* was made to a priest whose relations with the donor had been confidential. *Held*, that the gift is *prima facie* void. *Gilmore* v. *Lee*, 41 Chic. Leg. N. 217 (Ill., Sup. Ct., Dec. 15, 1908).

The existence of confidential relations between the parties to a gift *inter vivos* raises a presumption of undue influence. *Huguenin* v. *Basely*, 14 Ves. 273. But this doctrine is not applied to testamentary gifts. *Tyson* v. *Tyson*. 37 Md. 567, 583. See 14 HARV. L. REV. 73. One reason given for this distinction is that a testator is not impoverished by a bequest, and therefore may be legitimately influenced by considerations arising out of confidential relations. *Bancroft* v. *Otis*, 91 Ala. 279. See *Sparks' Case*, 63 N. J. Eq. 242, 248. On this reasoning a gift *causa mortis* should be treated like a will. But another explanation is that a greater degree of undue influence may reasonably be presumed in gifts than in wills, because one present and taking part in a transaction is better able to exercise coercion. *Haydock* v. *Haydock*, 34 N. J. Eq. 570; *Archer* v. *Hudson*, 7 Beav. 551. This explanation is supported by the strong tendency to apply to a will the presumption of undue influence when the legatee was active in procuring its execution. *Dale's Appeal*, 57 Conn. 127; *Sparks' Case, supra.* Furthermore a will is revocable, while a gift *inter vivos* is a finality. Failure to revoke a will indicates a continued assent and thus destroys the presumption. See *Miskey's Appeal*, 107 Pa. St. 611, 629. But a gift *causa mortis*, being made *in extremis*, is in fact practically beyond the donor's control. Hence there is no ground for distinguishing gifts *causa mortis* from gifts *inter vivos*. See *Thompson* v. *Heffernan*, 4 Dr. & War. 285.

INSURANCE — NATURE AND INCIDENTS OF INSURANCE CONTRACTS — RIGHT OF HOLDER OF LIEN TO INSURANCE MONEY. — A had a lien on lumber for sawing it from logs delivered to him by B. B had taken out a policy of insurance on the lumber payable to C, who had lent money on the security of the lumber. The lumber was burned. *Held*, that A has a lien upon the insurance money. *Chew* v. *Caswell*, 13 Ont. Wkly. Rep. 548 (Ont., Feb. 17, 1909).

A policy of fire insurance is a personal contract for the benefit of the assured and does not run with the property. *Quarles* v. *Clayton*, 87 Tenn. 308. So a mortgagee, as such, has no more right than any other creditor to the proceeds of a policy on the mortgaged premises for the benefit of the mortgagor, or of some other party having an insurable interest therein. *Columbia Insurance Co.* v. *Lawrence*, 10 Pet. (U. S.) 507. Unless there is an actual assignment of the policy to him, he can acquire a right only by contract with the assured. *Nichols* v. *Baxter*, 5 R. I. 491; *Nordyke & Marmon* v. *Gery*, 112 Ind. 535. The same rules apply to the holder of a mechanic's lien. *Galyon* v. *Ketchen*,

85 Tenn. 55. And the rights of the holder of a common law lien should be no greater. *Eichelberger* v. *Miller*, 20 Md. 332. Neither legal nor equitable title is necessary to an insurable interest, and the holder of a lien may insure to the extent of his claim. *Insurance Co.* v. *Stinson*, 103 U. S. 25; *Rohrbach* v. *Germania Fire Insurance Co.*, 62 N. Y. 47. Thus the plaintiff in the principal case might have protected himself fully, and there seems little reason to make any implication in his favor. See *Mosser* v. *Donaldson*, 10 Atl. 766 (Pa.).

INTERSTATE COMMERCE — CONTROL BY CONGRESS — ACTION BY THE COURTS PENDING INVESTIGATION BY INTERSTATE COMMERCE COMMISSION. — The plaintiffs were shippers on the defendant railroad which filed notice of a new schedule of rates. The plaintiffs, claiming that the new rates would cause irreparable injury, sued in equity to prevent their establishment pending a determination of their reasonableness by the Interstate Commerce Commission. *Held*, that the bill be dismissed. *Atlantic Coast Line Ry. Co.* v. *Macon Grocery Co.*, 166 Fed. 206 (C. C. A., Fifth Circ., Jan. 5, 1909). See NOTES, p. 524.

MORTGAGES — EQUITY OF REDEMPTION — MORTGAGEE'S RIGHT TO CONSOLIDATE MORTGAGES. — The owner of certain lots of land mortgaged them to the defendant. The equities of redemption he assigned to the plaintiff, who later acquired the equity of redemption in another lot, also mortgaged to the defendant, but not by the same mortgagor, and expressly excepted from the provisions of the Conveyancing Act, 1881. The plaintiff tendered the amount due on this last mortgage, but the defendant claimed the right to consolidate all the mortgages. *Held*, that the plaintiff may redeem this mortgage separately. *Sharp* v. *Rickards*, 99 L. T. R. 916 (Eng., Ch., Nov. 11, 1908).

It was formerly well established law in England that when a mortgagee acquired several mortgages on various estates, all given by the same mortgagor, he could consolidate his claims as against either the mortgagor or his assignee. *Vint* v. *Padget*, 2 De G. & J. 611. This rule was based on the ground that he who seeks equity must do equity, but its justice in practice was frequently questioned, and it was abolished by the Conveyancing Act, 1881, except where the right was expressly reserved in one of the mortgage deeds. 44 & 45 VICT. c. 41. The general rule in our courts has always been that a mortgagee can only demand payment of the debt due and covered by the mortgage sought to be redeemed. *Cohn* v. *Hoffman*, 56 Ark. 119. But the mortgagee has been allowed to consolidate a claim arising out of the same transaction in which the mortgage was given; so also a claim for money expended in protecting the property or title. *Burgett* v. *Osborne*, 172 Ill. 227; *Robinson* v. *Ryan*, 25 N. Y. 320. The principal case recognizes that on equitable grounds the English rule in so far as it still prevails should not be extended to a case where the mortgages were executed by different mortgagors.

MUNICIPAL CORPORATIONS — OFFICERS AND AGENTS — EFFECT OF RE-ELECTION AFTER OUSTER. — The charter of New York City provided that the president of a borough, an officer chosen by popular vote, might be removed for cause by the governor, and that a vacancy should be filled by a majority of the aldermen from the borough. The defendant, having been so removed, was immediately selected by the aldermen for the remainder of his original term. *Held*, that he is not entitled to the office. *People* v. *Ahearn*, 40 N. Y. L. J. 2477 (N. Y., App. Div., March, 1909).

For a discussion of the principles involved, see 20 HARV. L. REV. 316.

NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — ERRONEOUS INSTRUCTION MERELY AS TO DAMAGES. — A statute prescribed "a new trial" as the remedy for prejudicial error committed during a trial, but neither expressly authorized nor expressly prohibited retrial of part of the issues. After